

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WALSH SECURITIES, INC.,

v. Plaintiff,

CRISTO PROPERTY MANAGEMENT, LTD.,
et al.,

Defendants.

and

COMMONWEALTH LAND TITLE INSURANCE
COMPANY,

Defendant/Third Party Plaintiff,

v.

ROBERT WALSH and
ELIZABETH ANN DeMOLA,

Third Party Defendants.

Civil Action No. 97-3496 (WGB)
Honorable William G. Bassler

**THIRD PARTY PLAINTIFF COMMONWEALTH LAND TITLE INSURANCE
COMPANY'S BRIEF IN OPPOSITION TO THIRD PARTY DEFENDANT WEICHERT,
REALTORS MOTION TO DISMISS, AS IT RELATES TO COMMONWEALTH LAND
TITLE INSURANCE COMPANY'S THIRD PARTY COMPLAINT**

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PRELIMINARY STATEMENT

We represent the defendant Commonwealth Land Title Insurance Company (hereinafter "Commonwealth") in the above-captioned matter. Weichert, Realtors (hereinafter "Weichert") does not contend that Commonwealth's cross-claims against it run afoul of the statute of limitations. Indeed, claims for contribution and indemnification do not accrue until the recovery of judgment against the third party plaintiff. Consequently, Commonwealth submits this brief to support the contention that any dismissal granted in favor of Weichert should not serve to dismiss the cross-claims against it.

LEGAL ARGUMENT

POINT I

**WEICHERT HAS FAILED TO ASSERT A STATUTE OF
LIMITATIONS DEFENSE AGAINST COMMONWEALTH;
EVEN IF SHE HAD, SUCH A DEFENSE WOULD FAIL
BECAUSE COMMONWEALTH'S CLAIM HAS NOT YET
ACCRUED**

Under New Jersey law, claims for contribution and indemnification do not accrue until the recovery of judgment against the third party plaintiff. McGlone v. Corbi, 59 N.J. 86, 95 (1971); see also Mettinger v. Globe Slicing Mach Co., 153 N.J. 371, 387 (1998); Mahoney, Comparative Fault and Liability Apportionment (GANN, 2005) at 13:2-4. Said another way:

The rule generally recognized is that a claim for contribution. . . does not accrue, and the statute of limitations does not start to run thereon, at the time of the commission of the tort, or of the resulting injury or damage, but from the time of the accrual of the cause of action for contribution, which is at the time of payment of the underlying claim, payment of a judgment thereon, or payment of a settlement thereof, or at the time of other satisfaction or discharge of such claim in whole or in part, to an extent greater

than his pro rata share of the common liability, by the party seeking contribution.

57 ADR 3d 867 at § 3(a). For example, in Mettinger, a distributor sought indemnification and contribution from the successor of the manufacturer of an allegedly defective product. Id. The Mettinger Court held that the distributor's claims for indemnification and contribution against the manufacturer's successor did not accrue until the injured plaintiff obtained a judgment against the distributor. Id. Thus, the distributor's claims were preserved even though the successor did not even come into existence until after the statute of limitations on the underlying product claim had expired. Id.

In Markey v. Skog, 129 N.J. Super. 129, 200-201 (Law Div. 1974), Judge Pressler offers a succinct explanation of the interplay between a defendant's contribution right and the statute of limitations. Holding that a defendant can bring a contribution claim against an alleged joint tortfeasor even if the statute of limitations has run on the plaintiff's claim against that party, Judge Pressler stated:

It is clear that a defendant's right to contribution from a joint tortfeasor is, therefore, an inchoate right which does not ripen into a cause of action until he has paid more than his pro rata portion of the judgment obtained against him by the plaintiff. It is at that point that his cause of action for contribution accrues. . . The assertion by codefendants in a negligence action of a right of contribution inter sese and the right of a defendant to implead a joint tortfeasor by a third-party complaint before plaintiff's cause of action has been reduced to a judgment are merely devices of a procedural convenience afforded by the rules of practice. . .

Id. at 200; accord S.P. v. Collier high School, 319 N.J. Super. 452, 472 (App. Div. 1999);

Holloway v. State, 125 N.J. 386, 399 (1991).

In the case at bar, Commonwealth's claim against Weichert is for contribution under the Joint Tortfeasors Contribution Law, N.J.S. 2A:53A-1 et seq. As such, Commonwealth's claim

will not accrue until Walsh secures judgment against Commonwealth. Therefore, Commonwealth's right to contribution from Weichert may not be defeated by Walsh's statute of limitations bar, if such a bar exists.

POINT II

**SHOULD THE COURT GRANT WEICHERT'S MOTION
TO DISMISS PLAINTIFF'S CLAIMS BASED ON STATUTE
OF LIMITATIONS BAR, SUCH A DISMISSAL SHOULD
NOT SERVE TO DISMISS CROSS-CLAIMS AGAINST
WEICHERT**

Under Third Circuit law, "dismissal of the original Complaint as to one of the defendants named therein does not operate as a dismissal of a cross-claim filed against such defendant by a co-defendant." Aetna Ins. Co. v. Newton, 398 F.2d 729, 734 (3d Cir. 1968) (internal citations omitted); see also Fronmeyer v. L. & R. Construction Co., Inc., 139 F.Supp. 579, 585-86 (D.N.J. 1956); Fairview Park Excavating Co., Inc. v. Al Monzo Construction Co., Inc., 560 F.2d 1122, 1125-26 (3d Cir. 1977). As discussed above (Point I, supra), Commonwealth's cross-claims for contribution have not yet accrued under New Jersey law and will not accrue until a plaintiff secures judgment against Commonwealth. Furthermore, Weichert has not asserted a statute of limitations defense against Commonwealth's cross-claims. Consequently, Commonwealth respectfully requests that regardless of this Court's decision concerning dismissal of plaintiff's claims against Weichert, any dismissal should not also serve to dismiss Commonwealth's cross-claims against it.


CONCLUSION

Therefore, for the reasons set forth above, defendant Commonwealth respectfully requests that regardless of whether the plaintiff's Complaint is dismissed as to any co-defendants, this Court preserve any and all cross-claims filed against the co-defendants by defendant Commonwealth.

Respectfully submitted,

Dated: June 3, 2005

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UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY

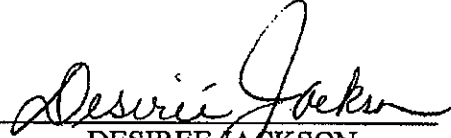
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WALSH SECURITIES, INC.,	:	
	:	
v.	:	Civil Action No. 97-3496
Plaintiff,	:	Honorable William G. Bassler
CRISTO PROPERTY MANAGEMENT, LTD.,	:	
et al.,	:	
	:	CERTIFICATION OF SERVICE
Defendants.	:	
and	:	
	:	
COMMONWEALTH LAND TITLE INSURANCE	:	
COMPANY,	:	
	:	
Defendant/Third Party Plaintiff,	:	
v.	:	
	:	
ROBERT WALSH and ELIZABETH ANN	:	
DeMOLA,	:	
Third Party Defendants.	:	
-----X		

DESIREE JACKSON, in lieu of affidavit under oath, says:

1. I am employed by the law firm of McCarter & English, LLP, attorneys for Defendants/Third Party Plaintiffs, Commonwealth Land Title Insurance Company, in this action.
2. On June 3, 2005, I caused to be delivered a copy of Third Party Plaintiff Commonwealth Land Title Insurance Company's Brief in Opposition to Third Party Defendant Weichert, Realtors Motion to Dismiss, As It Relates to Commonwealth Land Title Insurance

Company's Third Party Complaint, by certified mail and regular mail to all counsel listed on the attached as Exhibit A.

3. I hereby certify that the foregoing statements are true. If any of the foregoing statements made by me are willfully false, I am subject to punishment by law.


DESIREE JACKSON

Dated: June 3, 2005

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Revised 4/02/05

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